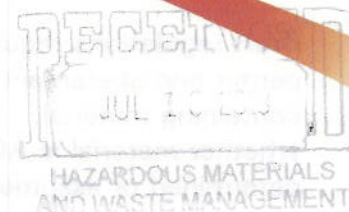


Mr. Charles Johnson
Solid Waste Compliance Assurance Unit
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, B-2
Denver, Colorado 80246-1530



Re: 6 CCR 1007-2 Part I Part A, General Requirements and Information Concerning all Solid Waste Disposal Sites and Facilities in the State of Colorado, Section 5.5 Draft Regulatory Language

Dear Mr. Johnson:

After both following and participating in the Section 5.5 stakeholder process, RTD wishes to register its concerns with the proposed revisions to the current regulations. The following are RTD's general comments to the Draft Regulation.

The proposed regulations appear to regulate possible asbestos containing soil even if the amount of asbestos may be so slight as to be measurable in trace amounts. The regulations may create significant additional cost, uncertainty, and potential liability in any organization's significant construction project within Colorado without any benefit to human health. In a significant departure from prior state law and regulation, the proposal creates a definition of "Regulated Asbestos Contaminated Soil" (RACS) that may be soil with any level of asbestos whatsoever. Unlike the definition of Asbestos Containing Material (ACM) which requires a minimum 1% asbestos by volume, regulated soil is proposed to be that which contains friable ACM or materials that have a high probability of releasing fibers whether known or unknown, with no minimum quantity. Theoretically, the possibility of one asbestos fiber that has or could be released from the ACM, makes that soil RACS.

The proposed regulations are inconsistent with other state and federal regulations. No other states have adopted similar regulations governing asbestos in soil. The only state that has proposed—but not implemented—regulations is Massachusetts, and those regulations would only regulate materials that are three inches or more in any dimension and which contain asbestos at concentrations above one percent (1%). Further, soils containing asbestos materials at a concentration of less than 150 mg_{ACM}/kg_{soil} would not be regulated under the proposed regulations. EPA similarly defines friable ACM as material containing more than one percent (1%) asbestos. As noted above, the revised regulations would break ranks with this accepted regulatory approach without a scientific justification by regulating asbestos in soils without regard to any threshold concentration and without regard to whether asbestos fibers would reasonably become airborne.

Draft regulations require management of RACS through testing, site management, disposal permit and abatement regardless of whether the RACS meets the definition of asbestos containing material. While proposed Section 5.5.1 (B) requires a determination of whether material is ACM or non-ACM, part B(6) states that a person who disturbs debris determined or assumed to contain ACM must make at RACS v. non-RACS determination. Management requirements are thereafter described by reference to whether the material is RACS, not ACM. The definition and management requirements nowhere state that the material is ACM, or must have a minimum 1% asbestos by volume to be RACS or to be managed according to 5.5.1(C).

The Solid and Hazardous Waste Commission (the Commission) is statutorily charged with maintaining sites and facilities in compliance with health laws, standards and rules of the Colorado Department of Public Health and the Environment (see, C.R.S. 30-20-110(b)). The Colorado Air Quality Control Commission is charged with determining maximum allowable asbestos levels which are the highest level of airborne asbestos under normal conditions that allows for protection of the general public. That level is specified, absent contrary scientific evidence at C.R.S. 25-7-503 (a)(II).

By proposing to regulate soil with any visible amount of probable asbestos or material that probably contains friable asbestos regardless of quantity, the Commission has de facto determined that notwithstanding statutes setting a minimum level, it will maintain facilities and manage soil whether or not there is any scientific evidence that the general public must be protected. Moreover the proposed regulations recite no evidence of the need to exceed currently established protective levels. Regulation of asbestos in soil based on appearance and assumption, in quantities less than those recognized to be necessary for protection of human health does not serve the public interest and does add layers of cost uncertainty and management. The only safe assumption if any possible ACM is encountered in any quantity, whether tested or not, verifiable or not, is to manage soil as RACS.

RTD respectfully requests that (i) any regulations regarding solid waste disposal and management of asbestos containing soil recognize and adhere to an approach that recognizes the accepted concentrations and circumstances under which asbestos fibers in soil may pose risk to human health; and (ii) regulate only those activities involving solid waste management and disposal.

RTD understands that CDPHE intends to conclude the stakeholder process in advance of the August meeting of the Solid and Hazardous Waste Commission and hopes that the formal submission of comments will help CDPHE to address those concerns in advance of the proposed rulemaking. Please include these comments in the rulemaking record and please include these comments on the stakeholder website.



Please contact me at 303-299-4038 or david.genova@rtd-denver.com with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Genova", with a long horizontal flourish extending to the right.

David A. Genova, CHMM, CSSD
Assistant General Manager – Safety, Security and Facilities

cc: Brian Long, CDPHE
Marla Lien, RTD (via e-mail)
Matt Harrison, RTD (via e-mail)
Susan Borden, LTE (via e-mail)
Polly Jessen, Kaplan Kirsch & Rockwell, LLP (via e-mail)